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# *Organizing* **A Farmer Cooperative**

Farmer Cooperative Service  
U. S. Department of Agriculture

FCS Circular 18

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THE Farmer Cooperative Service conducts research studies and service activities for farmers in connection with cooperatives engaged in marketing farm products, purchasing farm supplies, and supplying business services. The work of the Service relates to problems of management, organization, policies, merchandising, product quality, costs, efficiency, financing, and membership.

The Service publishes the results of such studies; confers and advises with officials of farmer cooperatives; and works with educational agencies, cooperatives, and others in the dissemination of information relating to cooperative principles and practices.

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## Organizing a Farmer Cooperative

**F**ARMERS organize cooperatives to provide themselves with many services. Marketing associations sell the growers' products and frequently prepare, process, and transport them to market. Farm supply associations purchase, manufacture, and distribute farm supplies for the benefit of their farmer-members. Farm business service associations provide warehousing, irrigation, insurance, and many other benefits for their members.

Producers have saved large sums of money by handling their business through their own organizations. But other important benefits, such as more modern facilities and improved services, may come also through cooperative activity. Cooperatives have taken the lead in standardizing products, in obtaining better methods of preparation, and in improving quality. Such services as these result in larger returns to the members and also are of material benefit to the consumers.

Cooperatives, like other business enterprises, are as different as the various

conditions under which they are developed. Only general principles may be laid down that apply to all types of associations. This circular is designed to focus attention on some of the more common factors pertaining to the organization of farmers' business associations. No attempt will be made to discuss each type separately.

Groups of farmers planning to form an association should have technical advice from those experienced in the services to be rendered, and in the organization and operation of cooperatives, as well as competent legal counsel. State and Federal agricultural agencies may be of assistance. The bank for cooperatives serving the territory in which the cooperative is to be organized is glad to give interested groups the benefit of its experience in meeting general organizational problems. Various publications designed to assist groups of producers interested in forming a cooperative may be obtained on request from the Farmer Cooperative Service.

### General Meeting of Producers

**W**HEN a group of producers decide that they should consider the formation of a cooperative, the usual plan is to arrange a general meeting of farmers in the area. If

sufficient interest is shown, a committee may be appointed by those attending the meeting to make a survey and report at a later time.

Members of this committee should

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**NOTE:** This publication was formerly Circular C-108, written by S. D. Sanders and L. S. Hulbert. The present circular has been revised by Raymond Mischler, Of-

fice of the General Counsel, and Helim H. Hulbert, Business Administration Branch, Management Services Division, Farmer Cooperative Service.

be chosen with care, since it is often these men who later organize the association and possibly become its directors. At such an open meeting many problems may be discussed and even

before formal organization has been started, the prospective members may have an opportunity to give thought to some of the future policies of the association.

## Preliminary Survey

**B**EFORE any steps are taken to organize a farmers' business association, a careful study should be made of the conditions under which it is to operate. A committee should be chosen at the first meeting to make such a study. An extension specialist in marketing of the State college of agriculture, a representative of the State department of markets, the county agent or some other responsible person who is properly qualified and available may be placed in charge of the details of the survey or work closely with the committee. A representative from a bank for cooperatives or the Farmer Cooperative Service, U. S. Department of Agriculture, may also be called on for advice and assistance in this study.

The farmer members of the committee should be selected for their good character, their interest in the proposed cooperative, their sound judgment, and their business ability.

The survey should determine the following: (1) The need for an association, (2) potential membership and volume, (3) outlets for products to be marketed or demand for farm supplies or services to be performed, (4) needed facilities, (5) required capital and its probable sources, (6) costs of operating similar businesses, and (7) information on any special problems or proposed operating methods that involve decisions to be made by the members.

### Need for an Association

The organization of a cooperative is a matter of importance, not only to those immediately concerned, but also to people everywhere who are inter-

ested in the development of agricultural cooperation on a sound and effective basis. So, aside from the specific conditions surrounding the formation of a cooperative, broader considerations make it important to start on a sound basis.

The foundation upon which any cooperative rests is the economic need for it as a business enterprise. Before steps are taken to organize a cooperative, production factors in the territory, marketing costs, existing outlets and facilities, and the attitude of the producers toward cooperatives should be analyzed, for these indicate whether there is an economic need. Should it be found that no economic need is present, a cooperative might do more harm than good.

When considering the establishment of a cooperative, the leaders and the prospective members should realize that while an economic need must be present, filling that need alone is not sufficient to make an association a success. It is probably safe to say that most failures of cooperative enterprises have resulted from lack of a thorough understanding that a cooperative is primarily a business institution and should be regarded as such.

### Potential Membership and Volume

Although it is essential that a definite interest in cooperation be shown by the producers who are to become members, it is not to be expected that all who will join the association will do so at once. The committee should make a conservative estimate of the number of prospective members and



When a group of farmers decide they want to form a cooperative they should first determine whether there is a definite need for such a business in the community.

of the probable volume of business. This involves a study of the normal production of the farmers who are expected to join and support the organization or of their farm supply or farm business service requirements.

It is sometimes desirable to visit or write to the farmers in the area to determine whether they are interested in the cooperative. Frequently those most anxious to see an association established have a tendency to overestimate the volume of business which may be expected. While many successful cooperatives have commenced operations on a small scale, the volume must be sufficient to support the overhead and other expenses and also afford a margin of savings.

### Market Outlets

If the association is to market farm products, it is important that alternative selling methods be considered. Occasionally it may appear desirable to establish working relationships with existing marketing agencies. Sometimes it may be found that the existing channels can be broadened and thus made to do a more efficient job of distribution. In still other cases the

committee will determine that the cooperative's interests may best be served by having its own representatives in the distribution centers.

In short, the committee should have full information concerning present and prospective outlets and a well-rounded marketing program to present for further consideration.

### Facilities

When it has estimated the potential volume, the committee should look into the type of plant and equipment required to take care of the business, with proper allowance for future expansion. It is important, however, that the expected volume be estimated conservatively so that the association will not be burdened with the cost of carrying excess facilities. When the facilities required are extensive and elaborate, it is necessary to have the advice of skilled engineers or technicians.

In making plans for the acquiring of buildings or equipment it is usually desirable to investigate existing facilities and determine whether they can be purchased or leased at a reasonable price.

## **Capital**

Knowing the expected volume of business and the approximate cost of acquiring the necessary land, buildings and equipment, the next point to be determined in the committee's survey is the amount of capital required. Adequate provision should be made not only to finance the acquisition of facilities, but also for operating capital.

It is important to consider the sources from which the required capital may be obtained. It should be borne in mind that the more the producers invest in their association, the more responsibility they will feel for its success and the more independent the association will be of outside financial assistance.

However, it is often necessary for the association to borrow funds to supplement those supplied by producers. Several sources usually are available from which the farmers' organization may borrow money, among these local banks and the banks for cooperatives. It is the committee's task to analyze the various sources of funds so it can recommend the agency which can supply financing most nearly suited to the needs of the association.

In determining how much capital will have to be supplied by members for land, buildings, and equipment, it is helpful to recall that a bank for cooperatives may not lend a cooperative funds to finance such facilities in excess of 60 percent of the value of the collateral offered. This, then, may serve as a guide, and generally the producers should plan to put up initially at least 40 percent of the cost of the facilities. Operating capital in addition to this amount should also be provided for.

## **Estimated Operating Costs**

The farmer is deeply concerned with the problem of costs since all expenses of handling, processing, or selling reduce his income. Before deciding to organize, the potential members and

directors should have a working knowledge of the probable costs of conducting the business. Publications of colleges and of Federal and State governmental agencies often supply information which reveals typical costs of certain businesses.

It is important that the cost information assembled by the committee be conservative so that members may not be led to expect greater savings than the association can achieve. The probable costs, as estimated by the committee, should be compared with the existing charges to determine whether any considerable savings will be possible. Cooperatives have been organized to cut costs where it was later found that when the business available was divided with existing agencies, costs in the area tended to rise.

## **Survey Report**

A full report on the findings of the committee should be presented at a general meeting of producers. The committee should be prepared to discuss the report with the farmers and help them to become fully informed as to the possibilities for success of the venture. Open discussion should be held on all factors mentioned in the committee's report, so that producers will be able to make an intelligent decision.

If the report is favorably received, the committee may be directed to take the necessary steps to form the association. If an organization agreement is to be used it may be discussed and presented for signature to those who wish to sign it.

One of the principal reasons for using an organization agreement is to ascertain how many farmers will patronize the association if it is organized and the approximate volume of business that they will give the association. Unless an association is assured of a sufficient volume to enable it to operate efficiently, it should not be organized.

## Forming the Association

THE LEGAL documents—articles of incorporation, bylaws, marketing agreement, and others—set the pattern for future action and hence, must be prepared with care. This is the task of the organization committee and those who assist. However, before the work of drawing up these forms is commenced, important decisions must be made. Some factors which should be reflected in the articles of incorporation and bylaws will be discussed in the following pages.

### Incorporation

It is possible, of course, to establish an unincorporated cooperative, but in the complex business environment in which the cooperative will find itself the corporate form of organization is preferable, in most cases, to the unincorporated form. Incorporation gives the association a distinct legal status which cannot be obtained otherwise. One principal advantage of incorporation is that, generally speaking, the members are not personally liable for debts of the organization.

### Capitalization

A simple method of capitalization should be adopted which will work under local circumstances and conditions. An association may be incorporated with or without capital stock. If the capital stock method is adopted, stock certificates are issued to the members as evidence of their ownership in the association.

Several types of stock may be used such as common stock, preferred stock, class A stock, and class B stock. It is seldom, however, that more than two classes of stock will be needed in any one association. In some cooperatives the common stock indicates membership and preferred stock evidences the capital contributions which may be issued and retired on what is commonly called a revolving fund basis.

In nonstock associations the members' contribution to capital is frequently evidenced by some form of certificate such as a revolving fund certificate. These certificates are sometimes variously designated as certifi-



Many associations use the revolving capital plan of financing. When the cooperative has sufficient capital, the directors can see that the members with the oldest outstanding certificates received their repayments first.

cates of indebtedness, certificates of interest, certificates of equity, or certificates of investment. If it is planned to use such certificates as evidence of capital contributions by members, special consideration should be given to their terms and conditions. Whether they are to bear a fixed rate of interest or a rate, if any, determined annually by the board of directors, and whether they are to have a definite due date or are to be retired only on call by the board are questions warranting careful study.

If the certificates are to be payable on or before a definite due date, such maturity should ordinarily be set a number of years beyond the date on which the association might normally expect to be able to retire the certificates. This "margin of years" should enable the association to avoid the necessity of retiring certificates during periods when the retention of capital is desirable.

It should be kept in mind that if certificates have a due date, they constitute obligations of the association on which suit could be brought if they are not paid when due.

### **Methods of Raising Capital**

No matter what type of instrument is to be used as evidence of capital contributions, the raising of the initial capital for a cooperative is frequently a difficult task. It should be remembered, however, that no business institution can commence operations on a shifting foundation of insufficient capital without jeopardizing its chances for future success. When the members fully recognize the need for an association to serve them, they are more likely to see the need for providing it with adequate capital.

The fortunate side to the apparent difficulties which sometimes attend the raising of initial capital is that it often affords a check to overambitious plans. It is better for a cooperative to begin operations on a conservative scale and on a sound foundation than to expand too widely at the outset. Back-track-

ing and retrenchment are always difficult. The small but sound cooperative usually finds growth and expansion comparatively easy.

If the committee estimates, for instance, that the total initial capital required is \$60,000 and that it will be possible to borrow \$24,000, there remains \$36,000 to be raised from the membership. In the case of a stock cooperative this will be raised by the sale of stock, while in nonstock associations it may be raised by the issuance of some type of certificate.

Under either plan a fair method of apportioning the amount to be paid in by the individual members would be on the basis of the normal patronage of each. Sometimes a few members are financially able to contribute more of the capital than their own proportion computed on a strictly patronage basis. They should be allowed to do so, since in a cooperative they do not necessarily receive any special privileges other than a reasonable return on their investment.

### **Shares of Low Par Value**

Most cooperatives using capital stock have found that shares of low par value, \$1, \$5, or \$10, are desirable. Shares of low par value are more readily sold, transferred, and retired, than shares of higher par value and also their use in many cases eliminates the necessity for issuing fractional shares.

### **Stock Subscription Notes**

The committee should carefully consider the subject of stock subscription notes. These are notes given by the members to the association to cover all or part of their subscriptions for capital stock, or other evidences of equity. The taking of stock subscription notes often has been found a disappointing method of raising capital, since it is an easy plan to set up but may be a difficult one to carry through to the realization of cash from the notes.

However, if an association and its members enter into a binding agreement which provides for definite deductions from sales proceeds or other satisfactory arrangements to realize cash from stock notes given by the members, this method of raising capital may prove satisfactory.

### Meeting Changing Conditions

An association may commence operations on a sound financial basis and have adequate capital, but may later find that changing conditions alter its financial needs. In the first place, the size and extent of the business are certain to change. If the business grows, more capital will be required, and if, for some reason, it fails to grow or recedes, there may be more capital than is needed.

These changes are also important from the standpoint of the members. New members will wish to join the cooperative and should be given an opportunity to acquire an interest in the business. Some members will cease to be producers and will no longer be able to patronize the association. Some of the members will move away. There is a continuous shift of membership and it is obvious that the new members must be given an opportunity to build up an investment in the cooperative which serves them.

### Revolving Capital Plan

Many associations are using successfully a method known as the revolving capital plan of financing. This type of financing, if used, should be specified in the bylaws and marketing agreement. In its simplest terms it provides that as the product—whether it be cotton, grain, apples, or any other commodity—passes through the cooperative, the association deducts a *retain* from the sales proceeds due the member. This retain is taken out for capital purposes only and should not be confused or identified with amounts deducted or retained to pay operating expenses.

At the rate of 1 cent a pound, 2 cents a bushel, or 3 cents a box, or whatever is decided upon, these deductions accumulate in the treasury of the cooperative. At the end of the year, or at the close of the marketing season, the accounting department totals up the amount of retains deducted for the account of each producer.

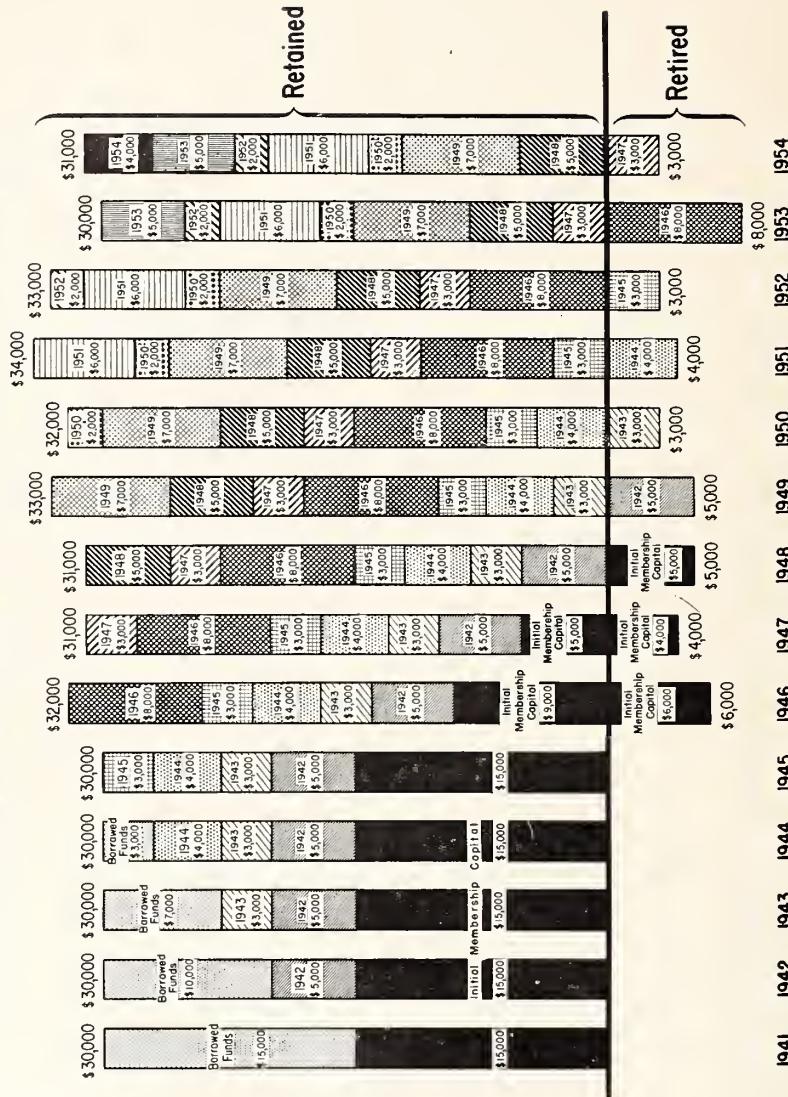
Then a certificate is issued to the member for the amount of the deductions which the cooperative has made for capital purposes. This certificate may be for stock if the association is organized with stock; otherwise it may take the form of a revolving fund certificate.

The members' equity in the association is increased by means of these retains. Also, when a new member joins the organization and begins delivering commodities to the association, he starts immediately to help contribute to its capital structure.

This same process goes on year after year. The retains for each season are kept by the association and certificates are given to the members. When the amount of capital accumulated is considered sufficient, the directors may declare that all of the retains deducted in the earliest year of operation will be returned. That is, the oldest outstanding certificates are called in and retired at par. This affords double satisfaction to the contributing patron; it gives him the satisfaction of receiving in cash the retain deductions of a past year and indicates to him that his association is on a sound business basis. It also allows those who have ceased to patronize the association to have their investments in the organization retired. In this way the active patrons at all times finance and control the cooperative.

In recent years farmer cooperatives of all types have adopted various modifications of the revolving fund plan of capital financing. Many associations using the plan do not deduct capital retains as such from the sales proceeds due members. A large percentage of farmer cooperatives, however,

# REVOLVING CAPITAL PLAN OF A FARMERS' COOPERATIVE



employing the revolving fund plan retain all or part of the net margins or net savings of each year's operations and place these amounts in revolving fund position. All associations, however, using the revolving fund plan of capital financing adhere to the fundamental principle of paying or retiring the oldest outstanding capital first.

As was mentioned in the section on Capitalization, special consideration should be given to the terms and conditions of such revolving fund certificates.

It is considered sound practice for a farm supply association to sell its product to its members at prevailing market prices. This avoids price cutting and destructive competition. Such associations may set aside a part or all of their savings for capital purposes. These amounts may be set up on the books to the individual accounts of members and used and rotated in the same manner as capital retains of a marketing association. Any remaining savings may be returned to the members as cash patronage refunds.

The accompanying chart illustrates the operation of the revolving capital plan. In the illustration chosen it takes 5 years for the capital to start rotating. Each one of the blocks represents 1 year's deductions.

It will be observed that in 1946 the association was able to retire \$6,000 of the initial capital paid in during 1941. It then retired the remaining \$4,000 and \$5,000 of the initial capital in 1947 and 1948, respectively. In 1949 the association retired the stock issued as evidence of retains in 1942, and so on through the years. It will be noted that the squares for different years are of different size, indicating the fluctuating volume of the several crop years.

### **Capital Reserves**

Valuation or operating reserves, such as those for depreciation or bad debts, which are fair and reasonable in amount, represent a part of the costs

of doing business. In addition to such reserves an association should build up capital reserves. Capital reserves are a part of the general capital of the association. They should be apportioned to the patrons on the books of the association. Unless such reserves are also "allocated" as required by the regulations of the Internal Revenue Service, they are subject to Federal income taxation.

Capital reserves constitute the first line of defense against attacks on the financial strength of an association and enable it to withstand poor years without impairing its capital which is represented by revolving fund certificates or by certificates of stock. The amount of reserves required for effective operation varies with the association and therefore no hard and fast rule can be given to cover the different types of associations.

If an association extends considerable credit, if there are wide price fluctuations in the commodity it handles, or if the production in its area is characterized by large variations in yield, then it should have a strong bulwark of capital reserves. It is not possible for the revolving fund plan to work without interruption if the certificates evidencing the capital to be revolved become impaired through losses or reverses.

### **Capital Reserves May Also Revolve**

But what will happen if capital reserves continue to be built up year after year and if circumstances have been so favorable that there are no charges against them? The revolving capital principle may then be adapted to the refunding of reserves. Capital reserves should be returned only at the discretion of the board of directors and when the amount of such reserves is in excess of the estimated needs. The patrons have, and should have, no immediate claim on the capital reserves, and they are, of course, definitely a part of the members' equity in the association.

## **The Marketing Agreement**

Reference has been made to a marketing agreement which should be entered into by a marketing association and each individual producer who becomes a member. The purpose of this agreement is to set forth in clear and unmistakable terms the duties and responsibilities of the association to its members and of the members to their association. In its simplest terms the marketing agreement provides that the member will deliver to the cooperative all his production of the specified commodity for sale.

The marketing agreement should provide that the producer agrees to the association's having the right to make deductions for financing the association and all necessary expenses such as those for handling, grading, packing, and distributing.

The association agrees to accept all of the commodity produced for commercial sale by the member and to market it to the best of its ability. It further pledges that it will return to the member the proceeds received from the sale of all his products, less actual handling and marketing costs and any other deductions for capital or capital reserves that may be authorized. The association also agrees to issue stock, revolving fund certificates or make book credits for all member capital.

## **Operating Methods and Policies**

The operating methods and policies of a cooperative must be adapted to the particular needs of each association. While much assistance can be obtained from the experience of others, each group must solve its own particular problems.

The members should be certain that the sales policies adopted by a marketing association are sound and will result in the greatest possible return for their products. A frequent cause of distress to cooperatives has arisen out of unwise attempts to hold

the commodities off the market in an effort to obtain higher prices at a later date.

Farm supply associations should exercise care to make certain that supplies of the best quality are being purchased at the most reasonable prices. Many farm supply associations operate on an outright purchase-and-resale plan. That is, the association buys the needed supplies and resells them to members. As mentioned earlier, it is usually desirable to have the selling price conform to the "going" or prevailing price in the area. Then at the close of a stated period, after deductions for expenses and reserves have been provided for, a patronage refund may be declared.

Some cooperative marketing organizations merely act as bargaining agencies. These cooperatives negotiate with existing agencies for the sale of their members' product, which can be more satisfactorily handled when delivered directly from the farm to the manufacturer or distributor. Under another method of operation, one particularly common among livestock selling associations, the cooperative handles and markets each member's products on a commission basis, distributing the savings later as patronage refunds.

In some cases marketing associations pay their members prevailing market prices at the time the products are delivered. Although certain of the risks arising from fluctuations in prices of some commodities can be avoided through hedging, these cooperatives still assume considerable risk. For this reason many marketing groups have found that the soundest plan of operation is one whereby a reasonable advance is made to the producer upon delivery of his products. Then, as sales are made, further payments are made to the member.

Under this plan the association's risk is reduced. At the same time the member realizes that his final returns

represent the market price for his commodity less the necessary deductions. By accepting a conservative advance at the time the products are delivered, the members make it possible for the cooperative to lessen destructive competition and avoid the disadvantages of a speculative position. The initial advance to members either may be set at a percentage of the "going" price or may be made at a flat rate which applies throughout the season unless there are major price fluctuations. The latter method is considered preferable by many successful cooperatives since competitors have no way of knowing

what the cooperative may finally net for the products handled.

It will be readily evident to the member that every effort should be made to keep operating expenses as low as possible. Every dollar spent for operating expenses must come out of the final returns and will reduce to that extent the amounts received by the members for their products. There are many ways by which associations can keep expenses to the minimum consistent with adequate service and good management. Plans should be made to commence business with efficient operating methods.

## Drafting the Organization Forms

WHEN the type of organization desired and the method of operation have been determined, the organization forms may be drafted. Suggested forms which are generally applicable to marketing and farm supply associations are shown in appendix A. They are general in character and they should be adapted or changed not only to meet statutory requirements but to meet specific business needs and circumstances.

For example, in forming an association to operate in a comparatively small area it may be found desirable to dispense with an organization agreement. In some instances it may be found that the circumstances and manner of operation of an association will be such that an "agency" form of marketing agreement would be preferable to a "purchase and sale" form of marketing agreement, like that suggested on page 15.

However, in all cases in which the agency form of marketing agreement is to be used, care should be exercised to confer upon the association ample control and dominion over the products to be delivered by its members, so as to enable the association to borrow on the products and to function effectively.

The forms must be carefully checked

by a competent attorney with the law of the State in which it is proposed to form an association and such changes must be made in them as will make them consistent with the statute under which the association is being incorporated, and to assure that the association will be legally authorized to accomplish all of the objects for which it is formed.

In order that the association may be eligible to borrow from a bank for cooperatives, those drafting the organization papers for a cooperative should keep in mind the following definition in the Agricultural Marketing Act of 1929, as amended (12 U. S. C. 1141j) which applies to cooperatives desiring to borrow:

As used in this act the term "cooperative association" means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and

Second. That the association does not pay dividends on stock or membership capital in excess of 8 percent per annum.

And in any case to the following:

Third. That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members \* \* \*.

In some States the statutes authorize the filing of record of marketing agreements, and if it is intended to have the marketing agreements of an association filed of record, care should be taken to insure that they will be so executed and acknowledged as to be eligible therefor.

In some instances it may be found practicable not to have a marketing agreement, but to include provisions in the bylaws of the association obligating its members to market their products through the association and specifying the terms and conditions under which the products will be marketed and accounted for. In this event each member should specifically agree to the bylaws that are then or may thereafter be in effect, when he applies for membership. In some cases it may be advisable to prohibit the termination of marketing agreements when members are indebted to the association.

The articles of incorporation and the bylaws provide for the organization of an association without capital stock. However, alternate paragraphs

or provisions have been provided for use where the association is organized on a capital stock basis. These are indented in brackets or appear in the footnotes.

These bylaws have been drawn on the theory that an association will receive and retain money for only two purposes—namely, for expenses, and for capital. The bylaws provide for evidencing the capital by the issuance of some form of certificate or by appropriate entries to the capital reserve accounts of the patrons.

The bylaws have been drawn on the theory that the current and active members of an association will furnish capital for the association in proportion to the use which they are making of the association. At the same time capital contributions previously made for the financing of the association will be retired in chronological order.

The forms have been prepared to insure that an association will at all times be controlled by producers who patronize the association. This is regarded as particularly important from the standpoint of the continued operation of an association as an agricultural cooperative as well as from the standpoint of eligibility to borrow from a bank for cooperatives, to obtain an “exempt” status under the Internal Revenue Code of 1954, and to qualify for the benefits of the Capper-Volstead Act.

## Appendix A—Suggested Organization Forms

*(Alternate paragraphs or provisions for use of associations organized on a capital stock basis are indented in brackets or appear in the footnotes.)*

### Organization Agreement

The undersigned, a producer of agricultural products, hereinafter referred to as "Producer," together with other signers of agreements similar hereto, for the purpose of engaging in \_\_\_\_\_

(In this space broadly state purposes for which association is to be organized) propose to organize a cooperative association without<sup>1</sup> capital stock under the laws of the State of \_\_\_\_\_, as hereinafter provided, and in consideration of the premises, hereby agrees for himself and for the express benefit of and for the association to be organized, as follows:

1. (a) The association shall be organized with suitable articles of incorporation and bylaws as determined by an organization committee consisting of the following persons (*State names and addresses of committee members*):

(b) This committee may, in the discretion of a majority thereof, increase its membership, fill any vacancy therein, and appoint any committees deemed necessary to conduct the details of its affairs. The committee, or any committee designated by it, may prescribe an organization fee to be paid by each person signing an organization agreement similar hereto and may incur necessary obligations, make necessary expenditures, and take any such action as may, in its discretion, be deemed advisable to further the organization of the association.

2. The bylaws of the association shall provide, among other things, that

(Here enumerate the chief provisions which it is proposed

shall be contained in the bylaws)

3. If, on or before \_\_\_\_\_, 19\_\_\_\_\_, the organization committee is of the opinion that sufficient sign-up has been obtained to enable the association to operate efficiently, the committee shall, by notice to be published in one or more newspapers of general circulation in the area in which those who sign agreements like this one reside, specify a date and place for a meeting of those who sign such agreements to enable those attending such meeting conclusively to determine, by majority vote, if a sufficient sign-up has been

<sup>1</sup> If association is to be formed with capital stock, "without" should be changed to "with."

obtained to justify the formation and operation of the association, and to consider such other business as may be deemed expedient. Notice of the action there taken shall be published in one or more newspapers of general circulation in the area.

4. The organization committee shall keep full, true, and detailed accounts of all receipts and of all expenditures of every kind and shall have such accounts audited and render a written report thereof to the board of directors of the association when organized, and shall thereupon turn over to the association any balance remaining in its hands free of obligation. If the association is not so organized, such unexpended balance shall be prorated among those who contributed thereto.

5. Producer hereby subscribes for \_\_\_\_\_ revolving fund certificates, each of the face value of \$\_\_\_\_\_, and agrees to pay therefor as follows:

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If association is to be formed with capital stock, the following may be substituted for paragraph 5:

"Producer agrees to purchase and does hereby subscribe for one share of voting common stock of the association, par value \$\_\_\_\_\_, payable on demand following the acceptance hereof, and \_\_\_\_\_ shares of nonvoting preferred stock of the association, par value \$\_\_\_\_\_, each, and agrees to pay for same as follows:

\$\_\_\_\_\_ cash on demand following the incorporation of the association.

\$\_\_\_\_\_ on or before \_\_\_\_\_, 19\_\_\_\_

\$\_\_\_\_\_ on or before \_\_\_\_\_, 19\_\_\_\_

It is understood that certificates for such preferred stock shall not be issued and that no dividends shall be paid thereon until such shares have been paid in full. Producer hereby authorizes and directs the association to apply any and all dividends or distributions accruing to him during any year to the payment of any or all installments due or which may be due on such stock subscriptions for that year or for any prior year."

6. Producer applies for membership in the association when organized and expressly agrees that signature to the marketing agreement shall be deemed to all intents and purposes the same as signature to this organization agreement, all of which shall be irrevocable, except as provided in section 3 of this organization agreement and section 12 of the marketing agreement or the bylaws of the association, and he so agrees in order to induce other producers to sign agreements like this one for his benefit as well as for their own general benefit.

If an association is formed without capital stock and is not to use a marketing agreement, the following may be substituted for paragraph 6:

"Producer applies for membership in the association when organized and expressly agrees that signature hereto shall be irrevocable, except as provided in section 3 hereof or in the

bylaws of the association, and he so agrees in order to induce other producers to sign agreements like this one for his benefit as well as for their own general benefit."

If association is to be formed with capital stock and is to use a marketing agreement, the following may be substituted for paragraph 6:

"Producer hereby agrees that his signature to the marketing agreement shall be deemed to all intents and purposes the same as his signature to this organization agreement, all of which shall be irrevocable except as provided in section 3 of this organization agreement and section 12 of the marketing agreement or the bylaws of the association and he so agrees in order to induce other producers to sign agreements like this one for his benefit as well as their own general benefit."

If an association is to be formed with capital stock and is not to use a marketing agreement, the following paragraph may be substituted for paragraph 6:

"Producer hereby agrees that his signature hereto shall be irrevocable, except as provided in section 3 hereof or in the bylaws of the association, and he so agrees in order to induce other producers to sign agreements like this one for his benefit as well as their own general benefit."

7. Acceptance hereof shall be deemed conclusive upon the mailing, by the association, of a notice to that effect to Producer at his address noted below, and such mailing and notice shall be conclusively established by the affidavit of the secretary of the association.

8. Subject to the terms hereof, Producer agrees to be bound by the terms of the following marketing agreement, which, on the acceptance hereof by the association, may be used separate from this organization agreement.

In those States which provide for the filing of record of marketing agreements, if desired, the following should be added at the end of the last sentence above: "and, upon demand of the Association when organized, to execute an agreement in like form and to acknowledge the same, if required, so as to entitle it to be filed of record."

This paragraph and other provisions herein relative to marketing agreements should be included only in the case of marketing associations and if no marketing agreement is used provision should be made for dating and for the signature and address of the Producer following paragraph 7.

### **Marketing Agreement**

This agreement between the \_\_\_\_\_ Association, hereinafter called the "Association," and the undersigned, hereinafter called the "Producer,"

Witnesseth:

(1) The Association buys and the Producer sells to the Association all

(Insert in this and corresponding blank spaces the agricultural

product or products to be handled)

hereinafter referred to as "products," except those which the Producer reserves for his own personal use, but not for sale, produced by or for him or acquired by him as landlord or lessor and the Producer agrees to deliver all such products at such place or places as the Association may direct. This agreement is intended by the parties to pass an absolute title to all such products as soon as they have a potential existence but shall be at the risk of the Producer until delivery. The Association is authorized to exercise any powers conferred upon it hereunder through any central agency of which this and any other similar associations are or may become members.

(2) The Association agrees to make such advances to the Producer on such products delivered hereunder as in the discretion of its board of directors may be justified by marketing conditions.

(3) The Association agrees to sell, either in the natural or processed state, such products, together with the products delivered by other producers, and to pay over ratably the net amount received therefrom as payment in full to the Producer, after making deductions to cover (a) advances, interest upon advances, the cost of picking, gathering, harvesting, receiving, assembling, transporting, handling, grading, packing, inspecting, processing, financing, advertising, storing, insuring, selling, and marketing such products and products derived therefrom; (b) organization, operating and maintenance expenses, and for capital in a central agency; (c) revolving fund retains for the purpose of building up such an amount of capital as may be deemed necessary by its board of directors from time to time and for revolving such capital in the manner that may be provided in the bylaws of the Association of not to exceed ----- percent of the gross sale price of such products and products derived therefrom.<sup>2</sup> The Association, within the discretion of its board of directors, is authorized to establish from time to time, daily, weekly, monthly, or seasonal pools of the agricultural products marketed by it of the same variety, grade, and quality, and all producers having such products in a particular pool shall share ratably in the net amount received therefrom.

(4) All products shall be delivered by the Producer at the earliest reasonable time after harvesting at such places as the Association may direct, and with such identification at the Producer's expense as may be prescribed by the Association.

(5) Any loss that the Association may suffer on account of inferior or damaged condition of products at delivery shall be charged against the Producer, individually.

(6) The Producer further agrees that the Association or the central marketing agency, individually or jointly, shall have the power to borrow money for any purpose of the Association or the central marketing agency on the security of the products delivered to the Association, the products derived therefrom, or on any evidence of such products or byproducts or cash or accounts arising from the sale thereof; and to give a lien, either legal or equitable thereon, as the absolute owner thereof, and the Association or the central marketing agency may grade, pool or commingle such products or products derived therefrom or any part thereof with other products or products derived therefrom of like grade and variety; and shall exercise all other rights of ownership without limitation.

<sup>2</sup> This may also read "— cents per unit (i. e.—bushel, carton)."

(7) Inasmuch as the remedy at law would be inadequate and inasmuch as it would be impracticable and extremely difficult to determine the actual damage resulting to the Association should the Producer fail to deliver the products covered hereby, regardless of the cause of such failure, the Producer hereby agrees to pay to the Association for all products delivered or disposed of, by or for him, other than in accordance with the terms hereof, the sum of ----- cents per ----- on all products, as liquidated damages for the breach of this agreement; all parties agreeing that this agreement is one of a series dependent for its true value upon the adherence of each and all of the contracting parties to each and all of such agreements, but the cancellation of this agreement or the failure of the Producer to comply herewith shall not affect other similar agreements.

(8) If the Association brings any action whatsoever by reason of a breach or threatened breach hereof, the Producer shall pay all costs of court, costs for bonds and otherwise, expenses of travel and all expenses arising out of or caused by the litigation, and reasonable attorney fees expended or incurred by it in such proceedings and all such costs and expenses shall be included in the judgment.

(9) It is agreed that the articles of incorporation and the bylaws, now or hereafter in effect, and this agreement constitute the entire agreement between the Association and the Producer.

(10) The Association may enter into agreements with other producers differing in terms from those contained herein but consistent with the bylaws of the Association without invalidating this agreement, provided that the Producer at his request may sign a similar agreement as a substitute for this agreement. By signing this agreement the Producer, unless already a member, applies for membership in the Association and the signing hereof by the Association shall constitute an acceptance thereof.<sup>3</sup>

(11) The Association or the central agency shall establish or adopt standards for such products and shall make rules and regulations governing the handling and shipping thereof and shall provide inspectors or graders to grade the products; and the Producer agrees to be bound by such grading and to observe such rules and regulations. The Association or said central agency shall provide for the inspection of all products delivered hereunder, and if any such products are not in proper condition for sale they shall be prepared for sale at the expense of the Producer.

(12) After this agreement shall have been in effect 2 years from the date of its acceptance by the Association, either party hereto may terminate it in any year on the last day of the anniversary month in which this agreement was so accepted by notifying the other party in writing of this intention, such notice to be given between the first and fifteenth of the month immediately prior to the effective date of termination. If neither of the parties hereto terminates this agreement in any year, as aforesaid, it is hereby mutually agreed that this shall constitute conclusive evidence that the parties hereto have renewed this agreement for another year.

(13) If there is a lien on any of the products delivered hereunder, the Producer authorizes the Association or central agency to pay the holder of said lien from the proceeds derived from the sale of such products before any payment is made to the Producer hereunder.

(14) The parties agree that there are no oral or other conditions, promises, covenants, representations or inducements in addition to or at variance with

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<sup>3</sup> If the association is to be formed with capital stock this sentence should be omitted.

any of the terms hereof; and that this agreement represents the voluntary and clear understanding of both parties fully and completely.

Read, considered, and signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Producer's signature \_\_\_\_\_ (\_\_\_\_\_.) (Print Producer's name here)

Address \_\_\_\_\_ (R. F. D. or Street No.) \_\_\_\_\_ (Town)

County \_\_\_\_\_ State \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. Association.

By \_\_\_\_\_ Its \_\_\_\_\_

*(Add acknowledgment if marketing agreement is to be filed of record)*

### **Articles of Incorporation<sup>4</sup>**

of \_\_\_\_\_<sup>5</sup> Association

We, the undersigned, all of whom are residents and citizens of the State of \_\_\_\_\_, engaged in the production of agricultural products, do hereby voluntarily associate ourselves together for the purpose of forming a cooperative association, without<sup>6</sup> capital stock, under the provisions of the \_\_\_\_\_ Cooperative Marketing Act of the State of \_\_\_\_\_.

#### **Article I—Name**

The name of the association shall be the \_\_\_\_\_ Association.

#### **Article II—Purposes**

The association is formed for the following purposes:<sup>7</sup>

To market for its members and other producers any and all agricultural products or any products derived therefrom; to engage in any activity in connection with the picking, gathering, harvesting, receiving, assembling, handling, grading, standardizing, packing, preserving, drying, processing, transporting, storing, financing, advertising, selling, marketing, or distributing of any such agricultural products or any products derived therefrom; to purchase for its members and other patrons farm supplies and equipment; to manufacture, process, sell, store, handle, ship, distribute, furnish, supply, and procure any and all such farm supplies and equipment; and to exercise all such powers in any capacity and on any cooperative basis that may be agreed upon.

#### **Article III—Powers, Limitations<sup>8</sup>**

SECTION 1. *Powers.* This association shall have the following powers:

(a) To borrow money without limitation<sup>9</sup> as to amount or corporate in-

<sup>4</sup> The articles of incorporation should be carefully checked against the State statute and should meet its requirements and be consistent therewith.

<sup>5</sup> Wherever required, the word "cooperative" should appear in the name of the association.

<sup>6</sup> If the association is to be formed with capital stock, this word should be "with."

<sup>7</sup> This article should be carefully modified in a manner consistent with the State statute to state the exact purposes for which a particular association is formed.

<sup>8</sup> In this as in other organization matters the statute under which an association is being incorporated should be consulted.

<sup>9</sup> In some States, the statutes require that the maximum indebtedness which may be incurred by a corporation be stated in its articles of incorporation.

debtors or liability; to give a lien on any of its property as security therefor in any manner permitted by law; and to make advance payments and advances to members and other producers.

(b) To act as the agent or representative of any patron or patrons in any of the activities mentioned in Article II hereof.

(c) To buy, lease, hold, and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conduct and operation of the business of the association, or incidental thereto.

(d) To draw, make, accept, indorse, guarantee, execute, and issue promissory notes, bills of exchange, drafts, warrants certificates and all kinds of obligations and negotiable or transferable instruments for any purpose that is deemed to further the objects for which this association is formed and to give a lien on any of its property as security therefor.

(e) To acquire, own, and develop any interest in patents, trademarks, and copyrights connected with or incidental to the business of the association.

(f) To cooperate with other similar associations in creating central, regional, or national cooperative agencies, for any of the purposes for which this association is formed, and to become a member or stockholder of such agencies as now are or hereafter may be in existence.

(g) To have and exercise, in addition to the foregoing, all powers, privileges, and rights conferred on ordinary corporations and cooperative marketing associations by the laws of this State and all powers and rights incidental or conducive to carrying out the purposes for which this association is formed, except such as are inconsistent with the express provisions of the act under which this association is incorporated, and to do any such thing anywhere; and the enumeration of the foregoing powers shall not be held to limit or restrict in any manner the general powers which may by law be possessed by this association all of which are hereby expressly claimed.

SECTION 2. *Limitations.*<sup>10</sup> This association shall not market the products of nonmembers in an amount the value of which exceeds the value of the products marketed for members. It shall not purchase supplies and equipment for nonmembers in an amount the value of which exceeds the value of the supplies and equipment purchased for members. It shall not purchase supplies and equipment for persons who are neither members nor producers of agricultural products in an amount the value of which exceeds fifteen percent (15%) of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the limitations imposed by this section.

#### Article IV—Place of Business

The association shall have its principal place of business in the city of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.

<sup>11</sup>

#### Article V—Period of Duration<sup>12</sup>

The term for which this association shall exist is \_\_\_\_\_ years from and after the date of its incorporation.

<sup>10</sup> If it is desired that an association not transact business with nonmembers, this section would require revision. If the association does not desire to qualify under section 521 of the Internal Revenue Code of 1954, this section can be partially or wholly omitted, depending upon the requirements of the State statute.

<sup>11</sup> Some States require the inclusion of the name of a resident agent upon whom process may be served.

<sup>12</sup> If the act under which the association is organized permits of perpetual existence this article may read, "This association shall have perpetual existence."

## Article VI—Directors

The number of directors of this association shall be \_\_\_\_\_.<sup>13</sup> Of the first elected board of directors \_\_\_\_\_ shall be elected for 1 year; \_\_\_\_\_ for 2 years; and \_\_\_\_\_ for 3 years; and thereafter all directors shall be elected for 3 years. The names and addresses of those who are to serve as incorporating directors until the first annual meeting of the members or until their successors are elected and qualified are:

Name

Address

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## Article VII—Membership

This association shall not have any capital stock, but shall admit applicants to membership in the association upon such uniform conditions as may be prescribed by the board of directors of the association, or in its bylaws. This association shall be operated on a cooperative basis for the mutual benefit of its members as producers, and membership in the association shall be restricted to producers, who shall patronize the association. The voting rights of the members of the association shall be equal and no member shall have more than one vote.<sup>14</sup> The property rights and interests of each member in the association shall be unequal; and shall be determined and fixed in the proportion that the patronage of each member shall bear to the total patronage of all the members with the association, but in determining property rights and interests all amounts allocated to each patron or evidenced by certificates of any kind shall be excluded, and, upon dissolution, the equity interests of members and patrons shall be determined as provided in the bylaws. New members admitted to membership shall be entitled to share in the property of the association in accordance with the foregoing general rule.

If the association is formed with capital stock, it is suggested that the following Article be substituted for this Article:

## Article VII—Capital Stock

SECTION 1. *Authorized amounts; classes.* The capital stock of the association shall consist of \_\_\_\_\_ shares, divided into \_\_\_\_\_ shares of common stock of the par value of \$\_\_\_\_\_.

<sup>13</sup> If the statute under which an association is to be incorporated will permit, it is preferable to state in the articles of incorporation only the minimum number of directors that the association will have, providing in the bylaws, which may be more easily amended, for the actual number. The provision of staggered terms may not be permitted by the laws of some States. If not, this article should provide that all directors shall be elected each year.

<sup>14</sup> If voting on any other basis is permitted by the State statute and the incorporators desire to provide for another basis, this sentence should be revised accordingly.

per share, and \_\_\_\_\_ shares of preferred stock of the par value of \$\_\_\_\_\_ per share.

SECTION 2. *Common Stock.* The common stock of this association may be purchased, owned, or held only by producers (1) who reside in the territory served by this association, (2) who patronize the association in accordance with uniform terms and conditions prescribed by it, and (3) who have been approved by the board of directors. "Producer" shall mean and include persons (natural or corporate) actually engaged in the production of \_\_\_\_\_, or other agricultural products, including tenants of land used for the production of any such product, and lessors of such land who receive as rent therefor part of any such product of such land, and cooperative associations (corporate or otherwise) of such producers.

Each member shall hold only one (1) share of common stock and each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders.<sup>a</sup> In the event the board of directors of the association shall find, following a hearing, that any of the common stock of this association has come into the hands of any person who is not eligible for membership, or that the holder thereof has ceased to be an eligible member, or that such holder has not, for a period of two (2) years, marketed through the association the products covered by a marketing agreement or agreements with it, or has not otherwise patronized the association, such holder shall have no rights or privileges on account of such stock, or vote or voice in the management or affairs of the association other than the right to participate in accordance with law in case of dissolution. The association shall have the right, at its option, (a) to purchase such stock at its book or par value, whichever is less, as determined by the board of directors of the association; (b) to require the transfer of any such stock at such book or par value, to any person eligible to hold it; or (c) to require such holder of any such stock to convert it into shares of preferred stock of equal value.

In exercising its right to purchase or to require the transfer or conversion of common stock into preferred stock if such holder fails to deliver the certificate evidencing the stock, the association may cancel such certificate on its books and issue a new certificate of common or preferred stock, as the case may be, to the party entitled thereto.

The common stock of this association may be transferred only with the consent of the board of directors of the association and on the books of the association, and then only to persons eligible to hold it; and no purported assignment or transfer of common stock shall pass to any person not eligible to hold it any rights or privileges on account of such stock, or vote or voice in the management of the affairs of the association. This association shall have a lien on all of its issued common stock for all indebtedness of the holders thereof

<sup>a</sup> If voting on any other basis is permitted by the State statute and the incorporators desire to provide for another basis, this sentence should be revised accordingly.

to the association. There shall be no dividends paid on the common stock.<sup>b</sup>

SECTION 3. *Preferred Stock.* The preferred stock of this association may be issued to any person, association, co-partnership, corporation or other organization, in series. It shall carry no voting rights.<sup>c</sup> Noncumulative dividends of not to exceed six percent (6%) per annum may be paid on preferred stock, when, if, and as declared by the board of directors.

Preferred stock may be transferred only on the books of the association; and may be redeemed in whole or in part on a pro rata basis at par plus any dividends declared thereon and unpaid, at any time on thirty (30) days' notice by the association, provided said stock is redeemed in the same order as originally issued by years. On the failure to deliver the certificate or certificates evidencing any such stock the association may cancel the stock on its books. Stock which has been redeemed may, in the discretion of the board of directors, be reissued or retired. All such preferred stock so redeemed shall be paid for in cash at the par value thereof, plus any dividend declared thereon and unpaid; and such stock shall not bear dividends after it has been called for redemption.

This association shall have a lien on all of its issued preferred stock for all indebtedness of the holders thereof to the association.<sup>d</sup>

At the discretion of the board of directors, all dividends or distributions of the association or any part thereof may be paid in certificates of preferred stock or credits on preferred stock or ad interim certificates representing fractional parts thereof, subject to conversion into full shares.

Notwithstanding any of the foregoing provisions, the board of directors shall have the power, from time to time and at any time, to pay off or retire or secure a release or satisfaction of any preferred stock certificates to compromise or settle a dispute between a holder thereof and the association, to settle an estate of a deceased or bankrupt stockholder, or to close out a stockholder's interest when he has moved from the territory.

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<sup>b</sup> A number of cooperatives are choosing to eliminate dividends on common stock since the investment is usually small and members would prefer to receive all returns on a patronage basis. Also, a nonexempt association is taxable on net margins equal to the maximum permissible dividends payable on stock, if the board is given the discretion to determine the dividend rate. *United Cooperatives, Inc.*, 4 T. C. 93. Provision may be made for dividends on common stock, however, if that is desired.

<sup>c</sup> In some States all classes of stock are entitled to vote. If necessary, this provision should be revised accordingly; but in such cases care should be taken to restrict the right to hold preferred stock to producers who patronize the association.

<sup>d</sup> Whether a lien should be provided on preferred stock may depend on the intended use of such stock in the operations of the association. Some cooperatives use such stock primarily as a means of raising capital by sale to investors who may or may not be patrons. If this is the intent, it may be undesirable to provide a lien since this may tend to restrict the salability and circulation of the stock in a free market. On the other hand, if the stock is issued primarily to patrons in payment of patronage refunds, it may be deemed advisable to provide for a lien to aid the association in collecting indebtedness from patrons.

Upon dissolution or distribution of the assets of the association, the holders of all preferred stock shall be entitled to receive the par value of their stock, plus any dividend declared thereon and unpaid before any distribution is made on the common stock.

In testimony whereof, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

State of \_\_\_\_\_<sup>15</sup>  
County of \_\_\_\_\_ ss.

Before me, a notary public, within and for said county and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared \_\_\_\_\_, known to me to be one of the identical persons who executed the within and foregoing instrument, and he acknowledged to me that he had executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above set forth.

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Notary Public

In and for the County of \_\_\_\_\_, State of \_\_\_\_\_.  
My Commission expires \_\_\_\_\_.

### **Bylaws<sup>16</sup>**

#### **Article I—Purposes and Powers**

The purposes for which this association is formed and the powers which it may exercise are set forth in the articles of incorporation of the association.

#### **Article II—Membership**

**SECTION 1. Qualifications.** Any person, firm, partnership, corporation, or association, including both landlords and tenants in share tenancies, who is a bona fide producer of agricultural products in the territory in which the association is engaged in business, and who agrees to be a patron of the association and who pays such membership fees and meets such other conditions as may be prescribed by the board of directors, may become a member of the association. This association shall issue a certificate of membership to each member which shall be in such form as may be prescribed by the board of directors but shall not be transferable.

**SECTION 2. Suspension or termination.** If, following a hearing, the board of directors shall find that a member has ceased to be an eligible member or has not, for a period of two (2) years, marketed through the association the products covered by a marketing agreement or agreements with the association or has not otherwise patronized the association or has moved out of the territory

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<sup>15</sup> The required number of incorporators should acknowledge, and the acknowledgment form should conform to the requirements of the State of incorporation.

<sup>16</sup> The bylaws should be carefully checked against the State statute and the articles of incorporation, and should be consistent with them.

in which the association is operating, it may suspend his rights as a member or terminate his membership. Upon termination of membership in the association, all rights and interests of such member in the association shall cease and such member shall be entitled only to payment or credit for the equitable appraised value of his property rights and interests in the association, as conclusively determined by the board of directors.<sup>17</sup> In determining property rights and interests all amounts allocated to each member or evidenced by certificates of any kind shall be excluded, and any such amounts shall be accounted for to members in accordance with the terms and conditions applicable thereto. No action taken hereunder shall impair the obligations or liabilities of either party under any contract with the association, which may be terminated only as provided therein.

If the association is formed with capital stock, it is suggested that this Article might be made to read as follows:

### **Article II—Membership**

Each member of this association shall be the holder of one fully paid share of its common stock. The requirements for ownership of common stock are set forth in the articles of incorporation. Any corporate member may be represented by any individual duly authorized in writing filed with the association.

### **Article III—Meetings of Members**

SECTION 1. *Annual Meeting.* The annual meeting of the members of this association shall be held in the town of \_\_\_\_\_, State of \_\_\_\_\_, at \_\_\_\_\_ o'clock a. m., on the \_\_\_\_\_ day of \_\_\_\_\_ of each year, or on any date which the board of directors shall designate at least 30 days in advance of the date specified above.

SECTION 2. *Special Meetings.* Special meetings of the members of the association may be called at any time by order of the board of directors, and shall be called at any time upon written request of at least ten percent (10%) of the members, provided, however, that in no case shall the required number of signatures to such a request be less than fifteen (15). The request shall state the time, place, and object of the meeting.

SECTION 3. *Notice of Meetings.* Written or printed notice of every regular and special meeting of members shall be prepared and mailed to the last known post office address of each member not less than five (5) days before such meeting. Such notice shall state the object or objects thereof and the time and place of meeting. No business shall be transacted at special meetings other than that referred to in the call.

SECTION 4. *Voting.* Each member shall be entitled to only one vote.<sup>18</sup> Voting by proxy or cumulative voting shall not be permitted. Absent members may vote on specific questions other than the removal of directors by ballots transmitted to the secretary by mail, and such ballots shall be counted only in

<sup>17</sup> The State statute may prescribe the rights of a person whose membership is terminated, in which case this provision should be made consistent.

<sup>18</sup> If voting on any other basis is permitted by the State statute and the incorporators desire to provide for another basis, this sentence should be revised accordingly.

the meeting at the time in which such vote is taken, provided that all members have been notified in writing, pursuant to action by the board of directors, of the exact wording of the motion or resolution upon which such vote is taken, and a copy thereof is forwarded with and attached to the vote of the member voting.

SECTION 5. *Quorum.* Ten (10) members or ten percent (10%) of members, whichever is greater, shall constitute a quorum for the transaction of business at any meeting of the association except for the transaction of business concerning which a different quorum is specifically provided by law or by these bylaws; but in the event a quorum is not present, such meeting may be adjourned from time to time by those present until a quorum is obtained.

SECTION 6. *Order of business.* The order of business at the annual meeting shall be:

1. Roll call.
2. Proof of due notice of meeting.
3. Reading and disposal of minutes.
4. Annual reports of officers and committees.
5. Unfinished business.
6. New business.
7. Election of directors.
8. Adjournment.

#### Article IV—Directors and Officers

SECTION 1. *Number and qualifications of directors.* The association shall have a board of directors of \_\_\_\_\_ (\_\_\_\_) members. Each director shall be a member of this association in good standing.<sup>19</sup> No person shall be eligible for the office of director if he is in competition with or is affiliated with any enterprise that is in competition with the association and if a majority of the board of directors of the association finds at any time following a hearing that any director is so engaged or affiliated he shall thereupon cease to be a director.<sup>20</sup>

SECTION 2. *Election of directors.* At the first annual meeting of the members of this association directors shall be elected to succeed the incorporating directors \_\_\_\_\_ (\_\_\_\_) directors shall be elected for 1 year \_\_\_\_\_ (\_\_\_\_) directors for 2 years; and \_\_\_\_\_ (\_\_\_\_) directors for 3 years, and thereafter each director shall be elected for 3 years.<sup>21</sup> At least two nominees shall be nominated for each directorship. All directors shall be elected by secret ballot and the nominee receiving the greatest number of votes shall be elected.

SECTION 3. *Election of officers.* The board of directors shall meet within \_\_\_\_\_ (\_\_\_\_) days after the first election and within \_\_\_\_\_ (\_\_\_\_) days after each annual election and shall elect by ballot a president, vice president, secretary, and treasurer (or a secretary-treasurer), each of whom shall hold office until the election and qualification of his successor unless earlier removed by death, resignation, or for cause. The president and vice president only need be members of the board of directors. Vacancies in such offices shall be filled by the board of directors through election by ballot.

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<sup>19</sup> If permitted by statute provision may be made authorizing representatives of incorporated members to be directors.

<sup>20</sup> It is sometimes deemed advisable to include a provision like the following: No director after having served for two consecutive terms shall be eligible to succeed himself, but after a lapse of one year shall again be eligible.

<sup>21</sup> The provision of staggered terms may not be permitted by the laws of some States. If not, this sentence should provide that all directors shall be elected each year.

SECTION 4. *Vacancies.* Whenever a vacancy occurs in the board of directors, other than from the expiration of a term of office, the remaining directors shall appoint a member to fill the vacancy until the next regular meeting of the members.

SECTION 5. *Board meetings.* In addition to the meetings mentioned above, regular meetings of the board of directors shall be held (monthly, quarterly, or semiannually) or at such other times and at such places as the board may determine.

SECTION 6. *Special meetings.* A special meeting of the board of directors shall be held whenever called by the president or by a majority of the directors. Any and all business may be transacted at a special meeting. Each call for a special meeting shall be in writing, signed by the person or persons making the same, addressed and delivered to the secretary, and shall state the time and place of such meeting. On the signing of a waiver of notice of a meeting, a meeting of the board of directors may be held at any time.

SECTION 7. *Notice of board meetings.* Oral or written notice of each meeting of the board of directors shall be given each director by or under the supervision of the secretary of the association not less than 48 hours prior to the time of the meeting, but such notice may be waived by all the directors, and appearance at a meeting shall constitute a waiver of notice thereof.

SECTION 8. *Compensation.* The compensation, if any, of the members of the board of directors and of the executive committee shall be determined by the members of the association at any annual or special meeting of the association. No member of the board of directors shall occupy any position in the association on regular salary.

SECTION 9. *Quorum.* A majority of the board of directors shall constitute a quorum at any meeting of the board.

## Article V—Duties of Directors

SECTION 1. *Management of business.* The board of directors shall have general supervision and control of the business and the affairs of the association and shall make all rules and regulations not inconsistent with law or with these bylaws for the management of the business and the guidance of the members, officers, employees, and agents of the association. It shall have installed an accounting system which shall be adequate to the requirements of the business and it shall be its duty to require proper records to be kept of all business transactions.

SECTION 2. *Employment of manager.* The board of directors shall have power to employ a manager, define his duties, fix his compensation, and to dismiss him with or without cause at any time. The board shall employ or authorize the employment of such employees, agents, and counsel as it from time to time deems necessary or advisable in the interest of the association, prescribe their duties, and fix their compensation. The manager shall have charge of the business of the association under the direction of the board of directors.

SECTION 3. *Bonds and insurance.* The board of directors shall require the manager and all other officers, agents, and employees charged by the association with responsibility for the custody of any of its funds or negotiable instruments to give adequate bonds. Such bonds, unless cash security is given, shall be furnished by a responsible bonding company and approved by the board of directors and the cost thereof shall be paid by the association. The board of directors shall provide for the adequate insurance of the property of the association, or property which may be in the possession of the association, or stored by it, and not otherwise adequately insured, and in addition adequate insurance covering liability for accidents to all employees and the public.

SECTION 4. *Audits.* At least once in each year the board of directors shall secure the services of a competent and disinterested public auditor or accountant, who shall make a careful audit of the books and accounts of the association and render a report in writing thereon, which report shall be submitted to the members of the association at their annual meeting. This report shall include at least (1) a balance sheet showing the true assets and liabilities of the association; (2) an operating statement for the fiscal period under review which shall show the cost of, and receipts from, sales and the gross margins or loss from each of the major commodities handled during the period; and a statement of all expenses for the period under review.

SECTION 5. *Agreements with members.* The board of directors shall have the power to carry out all agreements of the association with its members in every way advantageous to the association representing the members collectively.

SECTION 6. *Depository.* The board of directors shall have power to select one or more banks to act as depositories of the funds of the association and to determine the manner of receiving, depositing, and disbursing the funds of the association and the form of checks and the person or persons by whom they shall be signed, with the power to change such banks and the person or persons signing such checks and the form thereof at will.

## Article VI—Duties of Officers

SECTION 1. *Duties of President.* The president shall (1) preside over all meetings of the association and of the board of directors, (2) call special meetings of the board of directors, (3) perform all acts and duties usually performed by an executive and presiding officer, and (4) sign all membership <sup>22</sup> certificates and such other papers of the association as he may be authorized or directed to sign by the board of directors; Provided, however, that the board of directors may authorize any person to sign any or all checks, contracts, and other instruments in writing on behalf of the association. The president shall perform such other duties as may be prescribed by the board of directors.

SECTION 2. *Duties of the Vice President.* In the absence or disability of the president, the vice president shall perform the duties of the president.

SECTION 3. *Duties of Secretary.* The secretary shall keep a complete record of all meetings of the association and of the board of directors and shall have general charge and supervision of the books and records of the association. He shall sign all stock certificates with the president and such other papers pertaining to the association as he may be authorized or directed to sign by the board of directors. He shall serve all notices required by law and by these bylaws and shall make a full report of all matters and business pertaining to his office to the members at the annual meeting. He shall keep the corporate seal and all books of blank certificates, complete and countersign all certificates issued, and affix the corporate seal to all papers requiring a seal. He shall keep complete membership <sup>23</sup> records. He shall act as secretary of the executive committee. He shall make all reports required by law and shall perform such other duties as may be required of him by the association or the board of directors. Upon the election of his successor, the secretary shall turn over to him all books and other property belonging to the association that he may have in his possession.

SECTION 4. *Duties of Treasurer.* The treasurer shall perform such duties with respect to the finances of the association as may be prescribed by the board of directors.

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<sup>22</sup> If the association is formed with capital stock, this word should be changed to "stock."

<sup>23</sup> If the association is formed with capital stock, this word should be changed to "stock ownership."

## Article VII—Executive Committee and Other Committees

SECTION 1. *Powers and Duties.* The board of directors may in its discretion appoint from its own membership an executive committee of three (3) members, determining their tenure of office and their power and duties. The board of directors may allot to such executive committee all or any stated portion of the functions and powers of the board of directors, subject to the general direction, approval, and control of the board. Copies of the minutes of any meeting of the executive committee shall be mailed to all directors within seven (7) days following such meeting.

SECTION 2. *Other committees.* The board of directors may, in its discretion, appoint such other committees as may be necessary.

## Article VIII—Duties of Manager

SECTION 1. *In general.* Under the direction of the board of directors the manager shall have general charge of the ordinary and usual business operations of the association, including the purchasing, marketing, and handling of all products and supplies handled by the association. He shall, so far as practicable, endeavor to conduct the business in such a manner that the members and patrons will receive just and fair treatment. The manager shall deposit all money belonging to the association which comes into his possession in the name of the association in a bank selected by the board of directors, and if authorized to do so by the board of directors shall make all disbursements by check therefrom for the ordinary and necessary expenses of the business in the manner and form prescribed by the board of directors. Upon the appointment of his successor, the manager shall deliver to him all money and property belonging to the association which he has in his possession or over which he has control.

SECTION 2. *Duty to account.* The manager shall be required to maintain his records and accounts in such a manner that the true and correct condition of the business may be ascertained therefrom at any time. He shall render annual and periodical statements in the form and in the manner prescribed by the board of directors. He shall carefully preserve all books, documents, correspondence, and records of whatever kind pertaining to the business which may come into his possession.

SECTION 3. *Control of employees.* Subject to the approval of the board of directors, the manager shall employ, supervise, and dismiss any or all employees of the association but not agents or counsel specifically employed by the board of directors.

## Article IX—Membership Certificates

The board of directors shall cause to be issued appropriate certificates of membership.

If the association is organized with capital stock, it is suggested that this article might be made to read as follows:

## Article IX—Stock Certificates

SECTION 1. *Common Stock.* Each certificate of common stock shall show on its face its designation by class and privileges, voting rights or restrictions and qualifications applicable to shares of such class as specified in the articles of incorporation.

SECTION 2. *Preferred Stock.* Each certificate of preferred stock shall show on its face the preferences, privileges, voting rights or restrictions and qualifications of such stock as specified in the articles of incorporation.

## Article X—Patrons and Patrons' Net Margins

SECTION 1. *Patrons.* Each patronage transaction between this association and each patron shall be subject to and shall include as a part of its terms each provision of this Article X, whether it be expressly referred to in said transaction or not; and no person shall have any authority to transact any business for this association with any patron on any terms inconsistent with this Article X. Upon selling or consigning or otherwise delivering any agricultural product to this association or contracting to do so, and upon buying or otherwise receiving any farm supplies or equipment from this association or contracting to do so, each patron, with or without then executing any writing or doing any other act, thereby:

(a) Shall, as further consideration due him from this association on account of such transaction, become entitled to have paid to him such proportion of the Patrons' Net Margins received by this association as his patronage bears to the aggregate patronage of all patrons, all as more particularly hereinafter defined and provided; and

(b) Shall, in consideration of similar agreements by others in the same fiscal year, promise and agree to invest in the capital of this association (revolving fund) as requested by the board of directors <sup>24</sup> of the agricultural products sold, consigned or otherwise delivered to the association, which amount is hereby made deductible from the sales proceeds otherwise payable to the patron, and, in addition, such further sum or sums of money as the board of directors may specify; *Provided, however,* that his obligation to invest in said capital in any fiscal year of this association in addition to the rate prescribed above shall be limited to an amount equal to his share of the Patrons' Net Margins for the fiscal year next preceding the fiscal year in which such investment is required of him and shall be proportionate to the investments required of other patrons; it being the intention and agreement of this association and each patron and of its several patrons with each other that as the board of directors shall deem the capital of this association to be inadequate, or deem additional capital to be necessary to repurchase or retire previously issued certificates of indebtedness or capital interests, then its several patrons shall, subject to the foregoing limitations, furnish such additional capital as may be required, and shall do so substantially in proportion to their respective patronage in the preceding fiscal year.

SECTION 2. *Computation of Patrons' Net Margins.* The Patrons' Net Margins, calculated upon the basis of each fiscal year, shall be computed as follows:

(a) *Gross Receipts.* All proceeds of all sales of products marketed for patrons, plus all sums received for supplies and equipment procured for patrons, plus all sums received from all other sources except loans or contributions to this association or investments in its capital, shall be deemed to be the "Gross Receipts."

(b) *Patrons' Net Margins.* This association shall deduct from such Gross Receipts the sum of the following items:

(1) all costs and expenses and other charges which are lawfully excludable or deductible from this association's Gross Receipts for the purpose of determining the amount of any net margin of this association; and

<sup>24</sup> Here insert either "\_\_\_\_\_ percent of the gross resale price" or "\_\_\_\_\_ cents per unit (i. e.—bushel, carton)".

(2) an amount equal to ----- percent (-----%) of the balance of the Gross Receipts which remain after first having deducted therefrom the items referred to in clause (1) above.<sup>25</sup>

If in any fiscal year this association shall incur a net operating loss which is recognizable for tax purposes, the board of directors shall have full authority to charge off such loss either against net margins of future years or against revolving fund credits or in such other manner as will afford the association the maximum benefit for tax purposes.

The balance of said Gross Receipts which remain after the foregoing deductions shall be deemed to be the "Patrons' Net Margins."

The amount deducted pursuant to clause (2) above shall be set aside in a reserve and apportioned to patrons in accordance with their patronage during the fiscal year; Provided, however, that when such reserve shall reach the sum of \$----- the board of directors in its discretion may either (a) make no further deductions; or (b) retire such amounts of such reserve as it considers may be in excess of the association's reserve needs.<sup>26</sup> Such retirement shall be accomplished by paying off in full or pro rata patrons' apportioned interests, by years, the oldest being paid first.<sup>27</sup>

All of the Patrons' Net Margins shall, as received by the association, belong to and be held by the association for its respective patrons, and shall be distributed to them at the close of each fiscal year on a patronage basis. There shall be no discrimination between member and nonmember patrons in either the computation or payment of the Patrons' Net Margins; provided, that if a nonmember patron is eligible for membership, the amount of his share of the Patrons' Net Margins shall be credited to his individual account, and when such credits shall equal the amount of the required membership fee, a membership certificate shall be issued to him.<sup>28</sup>

The patrons' respective shares of the Patrons' Net Margins shall be computed upon the basis of their respective patronage of, and the net margins resulting from the operations of, the various pools or departments of this association and shall be in proportion to the quantity or value of the products delivered by, or supplies or equipment procured for, such patrons.<sup>29</sup>

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<sup>25</sup> If the association is formed with capital stock, add the following paragraph: "and (3) an amount not exceeding six percent (6%) of the aggregate par value of all shares of preferred stock issued and outstanding at the close of said fiscal year." The provisions of this clause must be coordinated with whatever provision is made for the payment of dividends in the articles of incorporation. If provision is made for dividends on common stock, a provision should be included here authorizing their payment.

<sup>26</sup> Statutory requirements concerning reserves should be ascertained and met. It is quite possible that the flexibility suggested in the above provision would not be possible of adoption in many States.

<sup>27</sup> If the association is formed with capital stock, it is suggested that the following additional paragraph be inserted at this point: "The amounts deducted pursuant to clause (3) above may, in whole or in part, in the discretion of the board of directors, either be declared and paid as dividends on preferred stock or be transferred to any reserve or capital account of the association, or distributed to the patrons on a patronage basis."

<sup>28</sup> If the association is formed with capital stock, it is suggested that the following language be substituted following the words "individual account": "and when such credits shall equal the par value of a share of capital stock, one such share shall be issued to him. Such share shall be common stock if said patron is then eligible to hold common stock or preferred stock if such patron is then ineligible to hold common stock."

<sup>29</sup> If the type of operations will permit, an association may wish to make this provision more specific and elect either the dollar volume or physical unit volume as the basis of allocation between patrons.

**SECTION 3. *Payment of Patrons' Net Margins.*** Each patron's share of the Patrons' Net Margins shall be payable to him in cash at the close of each fiscal year, but the legal offset of the payments due a patron against the obligation of such patron to subscribe for capital, as provided in section 1 (b) of this Article X, shall constitute full and complete discharge of the obligation of the association to make payment as herein provided.

**SECTION 4. *Lien.*** This association shall have a first lien on the interest of each patron in the Patrons' Net Margins for all indebtedness of such patron to this association.

### **Article XI—Revolving Fund**

**SECTION 1. *Purpose.*** This association shall establish and maintain a revolving fund for the purpose of acquiring and maintaining adequate capital to finance its business.

**SECTION 2. *Investment in Fund.*** This association may require investment in its revolving fund as provided in Article X, Section 1 (b) of these bylaws. Proper entries shall be made in the books and records of this association so that the net credit to each holder of an interest in the revolving fund in each year can be ascertained at any time. This association may issue revolving fund certificates to evidence credits in such fund, and the certificates may be in such form and contain such terms and conditions not inconsistent with this Article XI as the board of directors may prescribe.

**SECTION 3. *Operation.*** Investments in the revolving fund need not be segregated from, but on the contrary may be invested in or commingled with, any other assets of this association. No dividend, interest, or any other income shall be declared or paid on account of any net credits in the revolving fund. This association shall have a first lien on each revolving fund credit for all indebtedness of the holder thereof to this association.

**SECTION 4. *Repayment.*** If and when in the judgment of the board of directors the net balance in the revolving fund shall exceed the amount of capital reasonably needed by the association, it shall apply such excess to the retirement, in full or pro rata, of any or all the net credits in the revolving fund; provided, that such certificates shall be retired in the order of issuance by years and there shall be no discrimination between investments received in the same fiscal year. Notwithstanding any other provision of this section the board of directors, in its discretion, may retire any net credits at any time when the holder shall either (a) die, or (b) otherwise cease to be a producer, or (c) remove from the territory served by the association.

**SECTION 5. *Transfer.*** No assignment or transfer of any revolving fund shall be binding on this association without the consent of the board of directors nor until it shall have been entered in the books of this association.

### **Article XII—Dissolution**

Upon the dissolution of this association, all debts and liabilities of this association shall first be paid according to their respective priorities. The holders of credits in the revolving fund shall then be paid the amount of their credits in said fund. Holders of membership in the association shall then be paid an amount equal to the membership fee which they paid in order to acquire membership in the association. Any remainder of such property shall be distributed among the patrons who patronized the association during the five (5) fiscal years immediately preceding dissolution on the basis of their respective patronage as shown by the records of this association.

If the association is formed with capital stock, it is suggested that this section be changed to read as follows:

### Article XII—Dissolution

Upon the dissolution of this association, all debts and liabilities of this association shall first be paid according to their respective priorities. Any property remaining after discharging the debts and liabilities of this association shall be distributed to the stockholders and patrons of this association. Holders of shares of preferred stock shall first be paid, and shall be limited to, the par value of their preferred shares, plus any dividends declared thereon and unpaid. Holders of shares of common stock shall next be paid, and shall be limited to, the par value of their common shares. Holders of credits in the revolving fund shall then be paid the amount of their credits in said fund. The remainder of such property shall be distributed among the patrons who patronize this association during the five (5) fiscal years immediately preceding dissolution on the basis of their respective patronage as shown by the records of this association.<sup>a</sup>

### Article XIII—Unclaimed Money

A claim for money against the association shall be subject to the provisions of this section whenever the association is ready, able, and willing to pay such claim, and has paid or is paying generally claims arising under similar circumstances, but payment of such claim cannot be made for the reason that the association does not know the whereabouts or mail address of the one to whom it is payable or the one entitled to payment. If such claim be not actually paid within a period of \_\_\_\_\_ years<sup>30</sup> after it became payable as herein provided, the association shall remove the claim as a liability on its books; provided that no such removal shall be made unless at least 30 days prior thereto the association shall have sent by registered United States post, with the return receipt requested, a written notice of the proposed removal, addressed to the person appearing from the association's records to be entitled to payment of such money at the last address of such person shown by the records of the association. If any such claim be removed of record after giving such notice, the claim shall be deemed extinguished but the association shall continue to maintain a memorandum record of such claim and shall pay the principal amount thereof without interest to any claimant who subsequently establishes to the satisfaction of the association his right to receive payment. Any and all amounts recovered by the association pursuant to this Article, after deducting therefrom the amount of any taxes payable thereon, shall be placed in the

<sup>a</sup> Whether this or some other priority of payment should be prescribed will depend primarily (1) upon the requirements of applicable State law, and (2) the intended plan of operation. If the State law permits a choice, whether preferred stockholders should be paid prior to holders of revolving fund interests, or vice versa, would be influenced by whether the cooperative deems it advisable to favor one method over the other as a means of raising capital.

<sup>30</sup> Insert here a period equal to the applicable statute of limitations with respect to claims of this class.

reserve account of the association established under Article X, Section 2 (b) (2). Any claim paid after the expiration of the period of years herein specified shall be deducted from such account.

#### **Article XIV—Fiscal Year**

The fiscal year of this association shall commence on the first day of \_\_\_\_\_ each year and shall end on the last day of \_\_\_\_\_ of the following year.

#### **Article XV—Miscellaneous Provisions**

**SECTION 1. Bylaws Printed.** After adoption, these bylaws, preceded by the articles of incorporation, shall be printed in pamphlet form and a copy thereof shall be delivered to each member and to each person who later becomes a member of the association as shown on the books of record.

**SECTION 2. Seal.** The corporate seal of this association shall have inscribed on it the name of the association, \_\_\_\_\_, and the year of incorporation, \_\_\_\_\_.

#### **Article XVI—Amendments**

If notice of the character of the amendment proposed has been given in the notice of meeting, these bylaws may be altered or amended at any regular or special meeting of the members by the affirmative vote of a majority of the members present or voting by mail.

We, the undersigned, being all of the incorporators and members of the \_\_\_\_\_ Association, do hereby assent to the foregoing bylaws and do adopt the same as the bylaws of said association; and in witness whereof, we have hereunto subscribed our names, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_

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#### **Waiver of Notice of First Meeting of Members**

We, the undersigned, being all of the incorporators of \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_ (Name of association) (Town) (State) constituting all of the present members of such association, hereby waive notice of a meeting of the members and consent to the holding of a meeting of such members at \_\_\_\_\_ o'clock \_\_\_\_\_ M. on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, at \_\_\_\_\_ in \_\_\_\_\_, (Place of meeting) (Town)

\_\_\_\_\_ for the purpose of adopting bylaws for the government (State) of the association and transacting any other business that may properly come before the meeting.

Witness our signatures this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.  
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## **Waiver of Notice of First Meeting of Board of Directors**

We, the undersigned, being all the directors of \_\_\_\_\_, (Name of association)

-----, ----- hereby waive notice of a (Town) (State)

meeting of such directors at ----- o'clock ---- M. on ----- (Day)

the ----- day of -----, 19----, at ----- (Place of meeting)

in -----, ----- for the purpose (Town) (State)

of electing officers of the association to serve during the ensuing year, adopting the form of marketing agreement, and transacting any other business that may properly come before said meeting.

Witness our signatures this ----- day of -----, 19----

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## **Minutes of First Meeting of Members**

The first meeting of the members of ----- was (Name of association)

held at ----- o'clock ---- M. on the ----- day of -----, 19--, at -----, in ----- (Place of meeting) (Town) (State)

----- The chair called for proof of notice of the meeting, whereupon ----- presented a waiver of notice and consent to hold the meeting signed by all of the members of the association, which waiver and consent was in the following form:

*(Copy waiver of notice and consent to meeting.)*

The chair ruled that the meeting was properly called and it was ascertained that all the members of the association were present. The chair reported that the articles of incorporation of the association were filed on the ----- day of -----, 19--, at ----- o'clock in the ----- noon, in the office of the Secretary of State of the State of -----, and presented a copy of said articles of incorporation, which was read, and on motion duly made, seconded and carried, was directed to be entered in full in the minute book. (See page ----.) A draft of proposed bylaws for the government of the association was presented by ----- and was read to the meeting and discussed section by section and as a whole, and the proposed bylaws were unanimously adopted. Each member affixed his signature to the bylaws and the secretary was instructed to spread the bylaws on the minutes of this meeting.

*(Here insert record of any other business that may have been transacted.)*

There being no further business to come before the meeting, on motion duly made, seconded, and unanimously adopted, the meeting was adjourned.

----- (Temporary Chairman)

----- (Temporary Secretary)

## Minutes of First Meeting of Board of Directors

of

-----  
(Name of association)

The first meeting of the board of directors of the -----  
-----  
(Name of association)  
-----  
-----, -----, was held at ----- o'clock ----- M.,  
(Town) (State)  
on -----, 19---, at -----, in -----,  
(Day) (Place of meeting) (Town)  
-----  
(State)

Upon convening ----- was elected temporary chairman  
and ----- temporary secretary of the meeting, and each  
assumed his office.

The chair called for proof of notice of the meeting, whereupon-----  
----- presented a waiver of notice and consent to hold the meeting,  
signed by all the directors of the association, which waiver and consent was  
written as follows:

*(Copy of waiver of notice and consent to holding meeting.)*

Upon roll call of the directors of the association, the following answered  
present:

*(Record the names of all directors present.)*

The chair ruled that proper and legal notice of the meeting had been given  
and that a quorum was present, and announced that the meeting was open  
for transacting business.

The chair stated that the meeting was called for the purposes of electing  
officers<sup>31</sup> of the association for the ensuing year and transacting any other  
business that might properly come before the meeting.

Upon motion duly made and seconded, the following officers were unani-  
mously elected to serve at the discretion of the board until the time of the first  
regular meeting of the board to be held as soon as practicable following the  
first annual meeting of the stockholders.<sup>31</sup>

*(Record the names of the officers elected and the title of office.)*

Following the election of the officers,<sup>31</sup> the president took the chair, and the  
secretary assumed the duties as secretary of the meeting.

Upon motion duly made, seconded, and carried, the following were ap-  
pointed members of the executive committee, as provided in the bylaws.

*(Record the names.)*

Upon motion duly made and seconded, the following resolution was adopted:

Resolved, that the Executive Committee be charged with the following spe-  
cific powers and duties:

*(State here the specific powers and duties which it is desired to delegate  
during the period when the directors are not in session, subject to the general  
direction of the board.)*

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that the president and secretary be, and they are hereby, author-

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<sup>31</sup> Omit if the officers are named in the articles of incorporation.

ized to issue certificates of membership<sup>32</sup> in the form as submitted to this meeting, and each in form as follows:<sup>33</sup>

(*Here insert form.*)

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that the president and secretary be, and they are hereby, authorized to have printed a sufficient number of copies of the articles of incorporation and bylaws, so that a copy thereof may be delivered to each member and each person who may later become a member of the association.

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that the marketing agreement, in form as submitted to this meeting, copy of which appears hereafter, is hereby approved:

(*Here insert form of marketing agreement.*)

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that all subscriptions for revolving fund certificates<sup>34</sup> of the association and marketing agreements with the association, appearing on the list submitted by the secretary, be accepted, and that the president and the secretary be, and they hereby are, directed to carry out the terms and conditions thereof, and to execute all marketing agreements for and on behalf of the association.

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that the \_\_\_\_\_ Bank be selected as a depositary for the funds of the association.

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that all checks drawn upon the \_\_\_\_\_ Bank, for withdrawal of funds of the association on deposit therewith, be signed by the treasurer and countersigned by either the president or vice president.

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that the treasurer is hereby authorized to receive all funds paid into the association, endorse all checks and other media of exchange, and deposit the same to the account of the association in \_\_\_\_\_ Bank.

Upon motion duly made and seconded, the following resolution was adopted:

Resolved that the executive committee be, and they are hereby authorized to determine the amount of the bond or bonds which the bylaws specify shall be required of all officers, agents, and employees charged by the association with responsibility for the custody of any of its funds or property, and to see that the bonds, as required, are executed and presented for the approval of the board of directors.

(*Similar resolutions should be adopted, providing for the insurance of the property of the association and for adequate insurance covering other con-*

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<sup>32</sup> If the association is formed with capital stock, the resolution should be changed to authorize the issuance of certificates of stock, and the forms of the certificates should be inserted in the resolution.

<sup>33</sup> A suggested form of membership certificate follows:

*Certificate of Membership*

This certifies that \_\_\_\_\_ of \_\_\_\_\_, is a member of \_\_\_\_\_ Association and is entitled to all of the rights, benefits, and privileges of the Association.

Dated \_\_\_\_\_

\_\_\_\_\_ (Secretary)

<sup>34</sup> If an association is formed with capital stock, "revolving fund certificates" should be changed to "stock."

tingencies. Any additional business transacted by the board should also be recorded here.)

There being no further business to come before the meeting, on motion duly made, seconded, and unanimously adopted, the meeting adjourned.

-----  
*Chairman.*

### **Revolving Fund Certificate**

Series 19----

No. ----- (Date) -----

Amount, \$-----

This certifies that ----- of ----- has furnished ----- dollars to this association as capital, subject to the following conditions:

1. This and other revolving fund certificates of the same series are retireable in the sole discretion of the board of directors, either fully or on a pro rata basis, but certificates issued in prior years shall be entitled to priority (except as hereinafter provided) in retirement.
2. The amount stated in this certificate shall bear only such rate of interest, if any, as the board of directors may fix, from time to time, in no event to exceed six percent per annum.
3. This certificate is transferable only on the books of the association.
4. This and other certificates are subject in all respects to the bylaws of the association and are junior and subordinate to all debts of the association, both secured and unsecured. Upon the winding up or liquidation of the association in any manner, after full payment to all of its creditors, all revolving fund certificates shall then be retired in full or on a pro rata basis, without priority.<sup>35</sup>

In witness whereof the ----- has caused  
(Name of association)

this certificate to be signed by its duly authorized officers and to be sealed with its seal, this ----- day of -----, 19--

<sup>35</sup> This paragraph should conform to whatever priority of payment provisions are inserted in Article XII of the bylaws.

## **Appendix B—The Capper-Volstead Act**

### **An act to authorize association of producers of agricultural products**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: Provided, however, That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:*

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third. That the association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members.

SEC. 2. That, if the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Agriculture may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order the Secretary of Agriculture shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Agriculture and recited or set forth in said order shall be *prima facie* evidence of such facts, but either party may

adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association, and such service shall be binding upon such association, the officers, and members thereof.

Approved, February 18, 1922. (42 Stat. at Large 388.)





## **Other Publications Available**

Farmer Cooperatives in the United States, FCS Bulletin 1.

The Story of Farmer Cooperatives, FCS Educational Circular 1.

Three Principles of Agricultural Cooperation, Circular E-24, *Ward W. Fetrow*.

Financing Farmers' Cooperatives, FCS Educational Circular 5.

Forming Farmer Cooperatives, FCS Educational Circular 10.

Recent Federal Income Tax Changes Affecting Farmer Cooperatives. General Report 1, by *George J. Waas*.

Selecting and Electing Directors of Farmers' Cooperatives, General Report 14, by *Nelda Griffin, Harry N. Weigandt, and Kelsey B. Gardner*.

*While a supply is available, a copy of these publications and others on farmer cooperatives may be obtained by writing*

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